

DCP:MJB:dlm

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID LEE WOMACK,	:	NO. 1:CV-06-2348
Plaintiff	:	
	:	(Conner, J.)
v.	:	
	:	
JOSEPH V. SMITH, et al.,	:	
Defendants	:	Filed Electronically

**DEFENDANTS D. SCOTT DODRILL, HARLEY G. LAPPIN, JOHN
VANYUR, NEWTON KENDIG, LINDA THOMAS, AND
CHUCK MARIOANA’S STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendants Harley G. Lappin, Director of the Bureau of Prisons (the “BOP”); D. Scott Dodrill, Regional Director of the BOP; John Vanyur, Assistant Director, Correctional Programs Division; Linda Thomas, Central Office Correctional Services Administrator; Newton Kendig, Assistant Director, Health Services Division (in his official capacity only); and Chuck Marioana, Regional Correctional Services Administrator (collectively the “High Ranking BOP Officials”) respectfully submit this statement of material facts in support of motion for summary judgment. The High Ranking BOP Officials state as follows:

1. Womack filed his original complaint on December 7, 2006.
2. Womack is represented by counsel, who have access to the internet.

See www.morganlewis.com.

3. The former Program Statement 5566.05 ¶ 15 (effective July 1996 to November 2005) and current Program Statement 5566.06 ¶ 14 (effective since November 2005) provide that when an inmate is placed in restraints for a non-routine reason (moving and transferring inmates) notice should be given to Assistant Director, Correctional Programs Division; Assistant Director, Health Services Division; Central Office Correctional Services Administrator; Regional Director; and Regional Correctional Services Administrator. See Program Statement 5566.06 ¶ 14 (Ex. A); Program Statement 5566.05 ¶ 15 (Attach. 24 to Ex. 1 to Motion for Summary Judgment (Doc. No 28)).
3. Program Statement 5566.06 ¶ 14 is available on line and references former Program Statement 5566.05. See <http://www.bop.gov>.
4. Defendants provided a hard copy of the Program Statement 5566.05 to Womack (at the very latest) on April 25, 2007, as part of their

exhibits to the motion for summary judgment. See Attach. 24 to Ex. 1 to Motion for Summary Judgment (Doc. No 28).

5. Womack has no evidence that Defendants Vanyur, Thomas, Kendig, and Marioana had notice of this action. Indeed, there is no reason why they would. In addition, there is no reason why Defendants Vanyur, Thomas, Kendig, and Marioana would have notice that Womack mistakenly failed to add them as parties to the original complaint.

Accordingly, this Court should grant summary judgment to Defendants Vanyur, Thomas, Kendig, and Marioana because Womack failed to comply with the applicable two-year statute of limitations.

Respectfully submitted,

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/s/ Michael J. Butler

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Dated: August 27, 2009

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Plaintiff	:	
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HARLEY LAPPIN, et al.,	:	
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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

That on August 27, 2009, she served a copy of the attached

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by filing with the Court's ECF system.

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